

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 13 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0020-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
EDDIE ORLANDO SANTA CRUZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-53939

Honorable Carmine Cornelio, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Eddie Orlando Santa Cruz

Buckeye
In Propria Persona

H O W A R D, Chief Judge.

¶1 In this petition for review, petitioner Eddie Santa Cruz challenges the trial court's summary dismissal of what appears to be his fifth petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no such abuse here.

¶2 Santa Cruz argues, as he did in his petition below, that he had not known he had Hepatitis C at his September 1997 sentencing. Although Santa Cruz acknowledges he learned of his condition, at latest, before filing his first petition for post-conviction relief, he claims that because he was unaware his diagnosis could be used as a mitigating factor during sentencing, it constitutes newly discovered mitigating evidence that entitles him to be resentenced. *Cf. State v. Ellevan*, 179 Ariz. 382, 383, 880 P.2d 139, 140 (App. 1994) (finding status of testing positive for human immunodeficiency virus material to sentencing “because it can transform into a life sentence a term of years that would otherwise end well within the recipient’s probable life span”). The trial court denied post-conviction relief in a minute entry order that clearly identified Santa Cruz’s argument and correctly ruled upon it in a manner that will allow this court and any future court to understand its resolution. We therefore adopt the court’s ruling and see no need to revisit it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶3 Because we conclude the trial court did not abuse its discretion by dismissing Santa Cruz’s petition for post-conviction relief, we grant the petition for review but deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge